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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,362	09/03/2003	Martin Monteaale Browne	NIDN10520 DIV	4211

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AMERSHAM HEALTH  
IP DEPARTMENT  
101 CARNEGIE CENTER  
PRINCETON, NJ 08540-6231

EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/654,362	<b>Applicant(s)</b> BROWNE, MARTIN MONTEAGLE	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 12, 2005 has been entered.

### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

### ***Double Patenting***

3. Claims 1 and 3-12 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,223,918 in view of Kobayashi et al. The claims of US Patent 6,223,918 do not set forth the protective wall has a height extending in line with, or above the upper surface of the engageable member. Kobayashi teaches it is known to provide a protective wall extending to a height in line with or above the upper surface of the engageable member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the protective wall with a height extending in line with, or above the upper surface of the engageable member. Doing so provides more protection against accidental engagement with the engageable member prior to intended removal.

4. Claims 1 and 3-12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,659,296 in view of Kobayashi. The claims of US Patent 6,659,296 do not set forth the protective wall has a height

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extending in line with, or above the upper surface of the engageable member. Kobayashi teaches it is known to provide a protective wall extending to a height in line with or above the upper surface of the engageable member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the protective wall with a height extending in line with, or above the upper surface of the engageable member. Doing so provides more protection against accidental engagement with the engageable member prior to intended removal.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1,8-10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by von Schuckmann (US 5,316,163).

Von Schuckmann teaches a cap 6 with tongues (retaining portion) for protecting and holding the closure member 4 (stopper) on a container 1. The cap has a removable portion 8 to access the contents via a needle/syringe through the closure member 4.

Von Schuckmann further teaches a protective portion 11 that is threadably attached to the cap 6. Von Schuckmann further teaches a tamper evident member 13. The protective wall appears to extend to a height at least in line with the upper surface of the engageable member.

***Claim Rejections - 35 USC § 103***

7. Claims 1,7-10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over von Schuckmann in view of Kobayashi.

Von Schuckmann, as set forth above, teaches the structure claimed. Wherein it can be argued the protective wall does not extend to a height at least in line with the upper surface of the engageable member, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the protective wall with a height extending in line with, or

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above the upper surface of the engageable member. Kobayashi teaches it is known to provide a protective wall extending to a height in line with or above the upper surface of the engageable member. Extending the height of the protective wall provides more protection against accidental engagement with the engageable member prior to intended removal.

Regarding claim 7, wherein the upper wall of the protective portion extends above the engageable member it is over the engageable member.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over von Shuckmann.

Von Schuckman teaches the claimed cap except for the plastic being polypropylene or polyethylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize polypropylene or polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

#### ***Allowable Subject Matter***

9. Claims 3-6 appear to be allowable if rewritten to overcome the rejection(s) under non-statutory double patenting, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1 and 3-12 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify

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the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

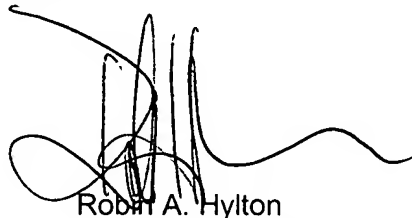
Date \_\_\_\_\_

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
November 28, 2005



Robin A. Hylton  
Primary Examiner  
GAU 3727